

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
Anthony P. De Marco State Bar Number 217815
Amber S. Healy State Bar Number 232730
Michael C. Mauceri State Bar Number 311220
12800 Center Court Drive, Suite 300
Cerritos, California 90703-9364
Telephone: (562) 653-3200
Facsimile: (562) 653-3333

Attorneys for Defendant
GARDEN GROVE UNIFIED SCHOOL
DISTRICT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

VINCE BURKLUND, as an individual
on behalf of himself and on behalf of all
others similarly situated,

Plaintiff,

vs.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT, a California public school
district; and DOES 1-100, inclusive,

Defendants.

CASE NO.:

**NOTICE OF REMOVAL OF
CIVIL ACTION TO FEDERAL
COURT**

Complaint Filed: May 5, 2022

[Orange County Superior Court
Case No. 30-2022-01258164-CU-OE-
CXC]

TO THE DISTRICT COURT OF THE UNITED STATES, CENTRAL
DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, PLAINTIFFS AND
THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant GARDEN GROVE UNIFIED
SCHOOL DISTRICT (“Defendant”), hereby removes to this Court the above-
captioned civil action from the Superior Court of the State of California, County of
Orange, Case No. 30-2022-01258164-CU-OE-CXC, to the United States District
Court, for the Central District of California, Southern Division, based upon federal

question jurisdiction pursuant to 28 U.S.C. sections 1331 and 1441(b). The suit is one of a civil nature over which the United States District Court has original jurisdiction. The removal is based upon the following grounds:

I. TIMELINESS.

1. On May 5, 2022, Plaintiff Vince Burklund (“Plaintiff”) commenced this action in the Superior Court of the State of California in the County of Orange captioned *Vince Burklund, as an individual on behalf of himself and on behalf of all others similarly situated v. Garden Grove Unified School District, a California public school district; and DOES 1-100, inclusive*, Case No. 30-2022-01258164-CU-OE-CXC. A true and correct copy of the issued Summons and conformed unverified Complaint filed in the Superior Court are attached hereto as Exhibit A and Exhibit B.

2. On May 5, 2022, Plaintiff filed a Civil Case Cover Sheet. A true and correct copy of Plaintiff’s Civil Case Cover Sheet filed in the Superior Court is attached hereto as Exhibit C.

3. On May 13, 2022, Plaintiff filed proof of substitute service of the Summons and Complaint served on Defendant. Per the proof of service, Plaintiff served Defendant with the Summons and Complaint on May 9, 2022. A true and correct copy of the Proof of Service of Summons filed in the Superior Court is attached hereto as Exhibit D.

4. This Notice of Removal is timely under 28 U.S.C. section 1446(b) in that Defendants have filed this Notice of Removal of Action within one (1) year of commencement of this action and within thirty (30) days of having first received the Complaint.

5. A true and correct copy of the Superior Court Docket is attached hereto as Exhibit E. The Docket shows that on May 5, 2022, the Superior Court action was assigned to the Honorable Randall Sherman. However, as shown in Exhibit E, no case assignment documents accompany the case assignment.

6. To Defendant's knowledge, no other defendant has been named or served with process in this action as of the date this Notice of Removal is filed.

II. STATEMENT OF GROUNDS FOR REMOVAL

7. This action has been removed to this Court based upon federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(a), in that it includes a claim arising under the laws of the United States.

8. Plaintiff's Complaint alleges three causes of action. The second cause of action in the Complaint alleges that Defendant's actions were in violation of the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* (See Complaint, Exhibit A ¶¶ 34-45, and Prayer for Relief, pp. 13-14). In the second cause of action, Plaintiff alleges that Defendant failed to compensate Plaintiff and the alleged "FLSA Class members" for all hours worked, as well as overtime and non-discretionary pay, at the rates or amounts required under the FLSA and federal regulations promulgated under the FLSA. Complaint, Exhibit A ¶¶ 34-45.

9. This action is therefore a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331. It raises a claim that is "necessarily federal in character," and one where the "right to relief depends on the resolution of a substantial, disputed federal question." See *Herman v. Salomon Smith Barney, Inc.*, 266 F. Supp. 2d 1208, 1211 (S.D. Cal. 2003); see also *Sparta Surgical v. Nat'l Ass'n of Sec. Dealers*, 159 F.3d 1209, 1211 (9th Cir. 1998) (holding that because the complaint sought relief based upon a violation of rules promulgated by an agency under the federal securities laws, subject matter jurisdiction was vested in the federal district court). Accordingly, this action may be removed to this Court.

10. Plaintiff's remaining causes of action are claims over which this Court may properly exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), because they form part of the same case or controversy as the claims over which this Court would have original jurisdiction. Specifically, Plaintiff's first and

third causes of action in the Complaint are either wholly derivative of Plaintiff's second cause of action or are based upon the same nucleus of facts arising out of Plaintiff's alleged employment with Defendant.

III. THE ADDITIONAL REQUIREMENTS FOR REMOVAL ARE MET.

11. Attached hereto as Exhibits A, B, C, and D are copies of all process, pleadings, and papers filed in the Superior Court in Defendant's possession, as follows: (1) Exhibit A - Plaintiff's Summons; 2) Exhibit B - Complaint; (3) Exhibit C - Plaintiff's Civil Case Cover Sheet; (4) Exhibit D - Plaintiff's Proof of Service of Summons. Defendant has not been served with any other process.

12. Defendant will file and serve a copy of the conformed Notice of Removal in the Superior Court of California for the County of Orange. Thereafter, Defendant will file a Certificate of Service of Notice to Adverse Party and to The Clerk of the Superior Court of Removal of Action to Federal Court.

WHEREFORE, Defendant prays that the above action pending in the Superior Court of the State of California, for the County of Orange, be removed to the United States District Court for the Central District of California, Southern Division.

Dated: June 7, 2022

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: /s/ Amber S. Healy

Anthony P. De Marco

Amber S. Healy

Michael C. Mauceri

Attorneys for Defendant

GARDEN GROVE UNIFIED SCHOOL DISTRICT